

SEP 25 2009

PTO/SB/64 (09-06)

Approved for use through 03/31/2007. OMB 0651-0031

U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

PETITION FOR REVIVAL OF AN APPLICATION FOR PATENT ABANDONED UNINTENTIONALLY UNDER 37 CFR 1.137(b)	Docket Number (Optional) 18
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First named inventor: **George Earl Peterson**

Application No.: **09/915,963**

Art Unit: **2821**

Filed: **07/26/01**

Examiner: **Shih Chao Chen**

Title: **Broadband Polling Structure**

Attention: Office of Petitions
Mail Stop Petition
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450
FAX (571) 273-8300

NOTE: If information or assistance is needed in completing this form, please contact Petitions Information at (571) 272-3282.

The above-identified application became abandoned for failure to file a timely and proper reply to a notice or action by the United States Patent and Trademark Office. The date of abandonment is the day after the expiration date of the period set for reply in the office notice or action plus an extensions of time actually obtained.

APPLICANT HEREBY PETITIONS FOR REVIVAL OF THIS APPLICATION

NOTE: A grantable petition requires the following items:

- (1) Petition fee;
- (2) Reply and/or issue fee;
- (3) Terminal disclaimer with disclaimer fee - required for all utility and plant applications filed before June 8, 1995; and for all design applications; and
- (4) Statement that the entire delay was unintentional.

1. Petition fee

☐ Small entity-fee \$ _____ (37 CFR 1.17(m)). Applicant claims small entity status. See 37 CFR 1.27.

☒ Other than small entity - fee \$ **1620** (37 CFR 1.17(m))

2. Reply and/or fee

A. The reply and/or fee to the above-noted Office action in the form of **Amendment** (identify type of reply):

☐ has been filed previously on _____
☒ is enclosed herewith.

B. The issue fee and publication fee (if applicable) of \$ _____

☐ has been paid previously on _____
☐ is enclosed herewith.

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This collection of information is required by 37 CFR 1.137(b). The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to take 1.0 hour to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Mail Stop Petition, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.

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3. Terminal disclaimer with disclaimer fee

☒ Since this utility/plant application was filed on or after June 8, 1995, no terminal disclaimer is required.☐ A terminal disclaimer (and disclaimer fee (37 CFR 1.20(d)) of \$ _____ for a small entity or \$ _____ for other than a small entity) disclaiming the required period of time is enclosed herewith (see PTO/SB/63).

4. STATEMENT: The entire delay in filing the required reply from the due date for the required reply until the filing of a grantable petition under 37 CFR 1.137(b) was unintentional. (NOTE: The United States Patent and Trademark Office may require additional information if there is a question as to whether either the abandonment or the delay in filing a petition under 37 CFR 1.137(b) was unintentional (MPEP 711.03(c), subsections (III)(C) and (D)).)

WARNING:

Petitioner/applicant is cautioned to avoid submitting personal information in documents filed in a patent application that may contribute to identity theft. Personal information such as social security numbers, bank account numbers, or credit card numbers (other than a check or credit card authorization form PTO-2038 submitted for payment purposes) is never required by the USPTO to support a petition or an application. If this type of personal information is included in documents submitted to the USPTO, petitioners/applicants should consider redacting such personal information from the documents before submitting them to the USPTO. Petitioner/applicant is advised that the record of a patent application is available to the public after publication of the application (unless a non-publication request in compliance with 37 CFR 1.213(a) is made in the application) or issuance of a patent. Furthermore, the record from an abandoned application may also be available to the public if the application is referenced in a published application or an issued patent (see 37 CFR 1.14). Checks and credit card authorization forms PTO-2038 submitted for payment purposes are not retained in the application file and therefore are not publicly available.

Michael J. Urbano
Signature

09/25/09
Date

Michael J. Urbano
Typed or printed name

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Registration Number, if applicable

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Address

(610) 691-7710
Telephone Number

Bethlehem, PA 18017
Address

Enclosures: ☒ Fee Payment☒ Reply☐ Terminal Disclaimer Form☒ Additional sheets containing statements establishing unintentional delay☒ Other: Form 2038

CERTIFICATE OF MAILING OR TRANSMISSION [37 CFR 1.8(a)]

I hereby certify that this correspondence is being:

☐ Deposited with the United States Postal Service on the date shown below with sufficient postage as first class mail in an envelope addressed to: Mail Stop Petition, Commissioner for Patents, P. O. Box 1450, Alexandria, VA 22313-1450.☒ Transmitted by facsimile on the date shown below to the United States Patent and Trademark Office at (571) 273-8300.

09/25/09
Date

Michael J. Urbano
Signature
Michael J. Urbano
Typed or printed name of person signing certificate

SEP 25 2009

Peterson 18

Serial No. 09/915,963

**IN THE UNITED STATES
PATENT AND TRADEMARK OFFICE****Patent Application**

Inventors(s): George Earl Peterson **Case:** 18
Serial No.: 09/915,963 **Filing Date:** July 26, 2001
Examiner: Shih Chao Chen **Group Art Unit:** 2821
Title: Broadband Polling Structure

**THE COMMISSIONER OF PATENTS AND TRADEMARKS
WASHINGTON, DC 20231**

SIR:

**STATEMENT OF FACTS IN SUPPORT OF
PETITION TO REVIVE PURSUANT TO 37 CFR §1.137(b)**

The following statement is submitted to provide facts establishing that the delay in responding to an outstanding Office action in the above-captioned patent application was unintentional pursuant to 37 CFR §1.137(b).

Facts Relevant to the Delay

- 1) The undersigned attorney (hereinafter, *Attorney*) is a part-time, sole practitioner with no support staff;
- 2) In 2007 Attorney filed an appeal of a final rejection of claims 1, 5-11, 15-21, and 23-25 on behalf of Applicant. On the other hand, the Examiner had indicated that claims 3, 4, 13, 14 and 22 would be allowable if rewritten in independent form.
- 3) On June 24, 2009 Attorney received a Decision of the Board of Patent Appeals and Interferences dated June 22, 2009. The Board affirmed the Examiner's rejection of claims 1, 5-11, 15-21, and 23-25.
- 4) On June 24, 2009, Attorney reviewed the rules of practice regarding appealing the Board's decision or requesting a rehearing, noting that the two-month period for such action would expire on August 22, 2009.
- 5) On June 30, 2009, Attorney emailed a copy of the Board's decision to M. I. Finston, Esq., the managing attorney on this case for the assignee, Alcatel-Lucent Inc. (previously Lucent Technologies Inc.). This email included Attorney's recommendation that the Board's decision not be appealed and the further recommendation that "we allow the case to issue with Claims 3, 4, 13, 14 and 22,

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assuming the Examiner does not change his position on their patentability.”

- 6) On July 1, 2009, Attorney received an email from Mr. Finston in which he agreed with Attorney's recommendations.
- 7) Both Attorney and Mr. Finston were under the (mistaken) impression that, without any action from us, the case would be returned to the Examining Division and an Office action would follow indicating that the allowable claims needed to be amended to put them into independent form.
- 8) On September 10, 2009, Attorney received a Notice of Abandonment dated September 8, 2009. The notice indicated the application had been abandoned in view of “Applicant's failure to timely file a proper reply to the Office letter mailed on June 22, 2009...because the period for seeking court review of the [Board's] decision has expired and there are no *allowed* claims.” (emphasis supplied)
- 9) On September 11, 2009, Attorney reviewed MPEP §1214.06 and §711.03 in an effort to understand why the case had gone abandoned. Only then did he realize that the case would not be returned to the Examining Division without an affirmative step by us and that merely having *allowable* claims in the case was insufficient under §1214.06 to keep the application pending.
- 10) On September 11, 2009, Attorney advised Mr. Finston that the case had gone abandoned and that, if the assignee wanted to pursue patent protection for the subject matter of claims 3, 4, 13, 14 and 22, he would have to file a petition to revive expeditiously.
- 11) On September 15, 2009, Mr. Finston sent Attorney an email indicating he had forwarded the application to an internal expert to obtain information that might help in determining what strategy the assignee wanted to pursue.
- 12) On September 18, 2009, Mr. Finston called Attorney to indicate that Attorney was instructed to pursue reviving the application.
- 13) On September 22, 2009, Attorney began the process of preparing the various documents required by the MPEP to revive the application.
- 14) On September 24, 2009, Attorney emailed a draft of those documents to Mr. Finston for his review and approval.
- 15) On September 25, 2009, Mr. Finston provided his comments on the documents and gave his approval for filing them with the USPTO.
- 16) On September 25, 2009, the petition to revive and associated documents were faxed to the USPTO.

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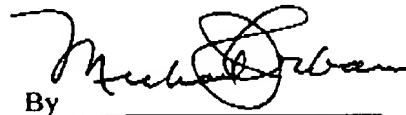
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*Peterson 18**Serial No. 09/915,963***Conclusion**

In view of the foregoing, it is respectfully requested that the aforesaid statement of facts establishes that the delay was unintentional and that the application should be revived. If during the consideration of this paper, the Commissioner believes that resolution of the issues raised will be facilitated by further discussion, he is urged to contact the undersigned attorney at 610-691-7710 (voice) or 610-691-8434 (fax).

Respectfully,

George Earl Peterson


By _____

Michael J. Urbano
Attorney for Applicant(s)
Reg. No. 24, 522
610-691-7710

Date: 09/25/09